

ESTTA Tracking number: **ESTTA325064**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91181143
Party	Defendant MBL/TIGI PRODUCTS, LP
Correspondence Address	Lisa W. Rosaya Baker & McKenzie LLP 1114 Avenue of the Americas` New York, NY 10036 UNITED STATES lisa.w.rosaya@bakernet.com, nyctrademarks@bakernet.com
Submission	Answer
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Signature	/lwr/
Date	01/04/2010
Attachments	Applicant's Answer.PDF (5 pages)(188017 bytes)

¹ As the application which is the subject of this opposition has been assigned to Unilever PLC and Applicant is concurrently filing with Applicant's Answer and Affirmative Defenses to Opposer's Notice of Opposition a Motion to Substitute Party and Notice of Appearance, the term NYCDMS/1144490.1

5. In response to paragraph 5, Applicant's Application Serial No. 78927189 speaks for itself and Applicant respectfully refers Opposer and the Trademark Trial and Appeal Board to said Application for the contents thereof.
6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph 6 and therefore denies the same.
7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph 7 and therefore denies the same.
8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph 8 and therefore denies the same.
9. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph 9 and therefore denies the same.
10. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 and therefore denies the same.
11. Applicant denies the allegations contained in paragraph 11.
12. The term "Opposer's goods" is not defined and therefore is ambiguous. Accordingly, Applicant can neither admit or deny the allegation contained in paragraph 12.
13. Applicant denies the allegations contained in paragraph 13.

AFFIRMATIVE DEFENSES

1. Applicant is concurrently filing with the Board a motion to amend the opposed application to delete the following goods: "briefs", "night shirts", "boxer shorts", "lingerie", "loungewear", "negligees", "night gowns", "pajamas", "robes",

Applicant as used herein will refer to Unilever PLC.

“sleepwear”, “slips” and “slippers”. If Applicant’s motion is granted, the restricted listing of goods will be as follows:

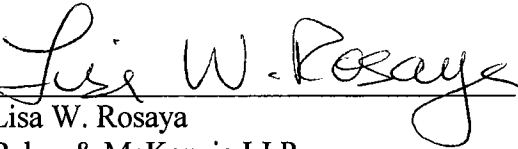
Infant, children and adult clothing, namely, anklets, anoraks, aprons, athletic uniforms, baby booties, baby bunting, baby rompers, baby sleepers, bandannas, cloth bibs, sweat bands, wrist bands, bathing suits, bathing trunks, beach cover-ups, beachwear, belts, blazers, blouses, brassieres, cheerleader outfits, cloth diapers, coats, leather coats, rain coats, sport coats, waistcoats, jackets, leather jackets, coveralls, fleece coveralls, infant coveralls, infant wear, dresses, dungarees, ear muffs, foul weather gear, gloves, shirts, golf shirts, knit shirts, polo shirts, rugby shirts, sport shirts, sweatshirts, t-shirts, tops, halter tops, tank tops, shorts, gym shorts, sweat shorts, hosiery, jumpers, jumpsuits, leg warmers, mittens, negligees, neck bands, neckerchiefs, neckwear, pants, lap pants, balloon pants, pantsuits, slacks, ski pants, snow pants, sweat pants, panties, parkas, ponchos, rainwear, scarves, shower caps, ski wear, skirts, smocks, socks, sweat socks, thermal socks, stockings, suits, body suits, gym suits, jogging suits, fleece jogging suits, play suits, sun suits, sweat suits, tracksuits, vested suits, warm-up suits, wind suits, suspenders, sweaters, turtleneck sweaters, v-neck sweaters, swim wear, swim trunks, swimsuits, teddies, tennis wear, ties, bow ties, neck ties, tights, trousers, turtlenecks, tuxedos, underpants, undershirts, underwear, thermal underwear, veils, vests, fishing waders; footwear, namely, shoes, clogs, golf shoes, thongs, sneakers; headwear, namely, berets, caps, baseball caps, bathing caps, hats, head bands, visors, sun visors; costumes, namely, Halloween costumes, masquerade costumes, swimming costumes; and uniforms.

Applicant owns prior registrations for the marks BED HEAD (Reg. No. 3060603) and COCKY BED HEAD (Reg. No. 3473612) covering “[a]pparel, namely t-shirts, tank tops, halter tops, caps, sweat pants, and jackets” and “Clothing, namely, T-shirts, caps”, respectively. As Applicant’s registered marks and goods are substantially similar to Opposer’s alleged goods as well as the marks and goods covered in Applicant’s opposed application, the application being opposed would cause no added injury or damage to Opposer within the meaning of Section 13 of the Lanham Act. *See Morehouse Manufacturing Corp. v. J. Strickland and Co.*, 407 F.2d 881, 160 USPQ 715 (CCPA 1969).

2. There is no likelihood of confusion between Opposer’s and Applicant’s marks.
3. The Notice of Opposition fails to state a claim upon which relief can be granted.

4. Applicant does not need Opposer's consent or permission to use Applicant's mark.

Respectfully submitted,

By: 

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Date: January 4, 2010

Attorneys for Applicant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES TO OPPOSER'S NOTICE OF OPPOSITION** was served via First class mail on attorney for Applicant, Angela C. Agrusa, Esq., Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor LLP, 1100 Glendon Avenue, 14th Floor, Los Angeles, CA 90024-3503 on this 4th day of January, 2010.

A handwritten signature in black ink, appearing to read 'Amelia J. Hochman', written over a horizontal line.

Amelia J. Hochman